

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL DRAGOVICH; MICHAEL GAITLEY;
ELIZABETH LITTERAL; PATRICIA FITZSIMMONS;
CAROLYN LIGHT; CHERYL LIGHT; DAVID BEERS;
CHARLES COLE; RAFAEL V. DOMINGUEZ; JOSE G.
HERMOSILLO, on behalf of themselves and all others
similarly situated,

Plaintiffs - Appellees,

v.

No. 12-16461

BIPARTISAN LEGAL ADVISORY GROUP OF THE U.S.
HOUSE OF REPRESENTATIVES,
Intervenor – Defendant - Appellant,

and

UNITED STATES DEPARTMENT OF THE TREASURY;
TIMOTHY GEITHNER, Secretary of the Treasury;
INTERNAL REVENUE SERVICE; DOUGLAS
SHULMAN, Commissioner of the Internal Revenue
Service; BOARD OF ADMINISTRATION OF
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
SYSTEM; ANNE STAUSBOLL, Chief Executive Officer,
CalPERS,

Defendants.

MICHAEL DRAGOVICH; MICHAEL GAITLEY;
ELIZABETH LITTERAL; PATRICIA FITZSIMMONS;
CAROLYN LIGHT; CHERYL LIGHT; DAVID BEERS;
CHARLES COLE; RAFAEL V. DOMINGUEZ; JOSE G.
HERMOSILLO, on behalf of themselves and all others
similarly situated,

Plaintiffs - Appellees,

v.

No. 12-16628

UNITED STATES DEPARTMENT OF THE TREASURY;
TIMOTHY GEITHNER, Secretary of the Treasury;

INTERNAL REVENUE SERVICE; DOUGLAS SHULMAN, Commissioner of the Internal Revenue Service,

Defendants-Appellants,

and

BOARD OF ADMINISTRATION OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM;
ANNE STAUSBOLL, Chief Executive Officer, CalPERS,
Defendants,

BIPARTISAN LEGAL ADVISORY GROUP OF THE U.S.
HOUSE OF REPRESENTATIVES,

Intervenor – Defendant.

CONSENT MOTION TO CONTINUE STAY

For the reasons set forth below, the Executive Branch Defendants respectfully request that the Court continue to stay the consolidated appeals in No. 12-16461 and No. 12-16628 pending the decision of the Supreme Court of the United States in *United States v. Windsor*, Sup. Ct. No. 12-307. This motion is filed in accordance with the Court's order of February 27, 2013, which provides that, “[o]n or before the expiration of the stay, [June 25, 2013,] appellants shall file the opening briefs or file an appropriate motion addressing the status of the Supreme Court case and requesting continuance of the stay or other relief.” The Executive Branch Defendants request that the parties be given until August 1, 2013, to confer and notify the Court how the parties propose to proceed. The Bipartisan Legal Advisory Group of the U.S. House of Representatives (“BLAG”) states that it consents to this motion. Plaintiffs state

that they consent to the proposed stay, but that their position is that the parties should meet and confer and submit a proposed briefing schedule to the Court by August 1, 2013.

1. These consolidated appeals are from the same district court order and judgment holding that Section 3 of the Defense of Marriage Act (“DOMA”), 1 U.S.C. § 7, is unconstitutional as applied to same-sex married couples, and that § 7702B(f) of the Internal Revenue Code (“IRC”), 26 U.S.C. § 7702B(f), is unconstitutional to the extent that it precludes the California Public Employees’ Retirement System (CalPERS) long-term care plan from covering same-sex domestic partners.

2. On March 27, 2013, the Supreme Court heard oral argument in *United States v. Windsor*, No. 12-307, and submitted the case for decision. The question presented is the following: “[w]hether Section 3 of DOMA violates the Fifth Amendment’s guarantee of equal protection of the laws as applied to persons of the same sex who are legally married under the laws of their State.” This is one of the same issues presented in these consolidated appeals. The Supreme Court also directed the parties to brief and argue the following questions: “Whether the Executive Branch’s agreement with the court below that DOMA is unconstitutional deprives this Court of jurisdiction to decide this case; and whether the Bipartisan Legal Advisory Group of the United States House of Representatives has Article III standing in this case.”

3. This Court’s Order of February 27, 2013, stayed these two consolidated cases until June 25, 2013, in light of the “pending Supreme Court decision in *United*

States v. Windsor, Sup. Ct. No. 12-307.” The Court’s Order provides that “[o]n or before the expiration of the stay, appellants shall file the opening briefs or file an appropriate motion addressing the status of the Supreme Court case and requesting continuance of the stay or other relief.”

4. *United States v. Windsor*, S. Ct. No. 12-307, is still pending before the Supreme Court. As these consolidated appeals involve the same question currently pending in *Windsor*, the Court should continue to stay these cases pending the Supreme Court’s determination of *Windsor*. The Executive Branch Defendants request that the parties be given until August 1, 2013, to confer and notify the Court how the parties propose to proceed.

7. The Executive Branch Defendants have conferred with counsel for BLAG and for plaintiffs. BLAG states that it consents to this motion. Plaintiffs state that they consent to the proposed stay, but that their position is that the parties should meet and confer and submit a proposed briefing schedule to the Court by August 1, 2013.

CONCLUSION

For the foregoing reasons, the Executive Branch Defendants respectfully request that the Court continue to stay the consolidated appeals in No. 12-16461 and No. 12-16628 pending the decision of the Supreme Court in *United States v. Windsor*, Sup. Ct. No. 12-307, and that the parties be provided until August 1, 2013, to confer and notify the Court how the parties propose to proceed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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